

APPENDIX G – FINCEN INDUSTRY SURVEY AND RESPONSES

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Proposed Collection; Comment Request; Cross-Border Electronic Transmittals of Funds Survey

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Crimes Enforcement Network requests comments on a survey that seeks input from trade groups representing members of the U.S. financial services industry on the feasibility of requiring reporting of cross-border electronic transmittals of funds, and the impact such reporting would have on the industry. The survey is part of a study of these issues required by section 6302 of the Intelligence Reform and Terrorism Prevention Act of 2004. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 105–13, 44 U.S.C. 3506 (c)(2)(A).

DATES: Written comments should be received on or before May 5, 2006.

ADDRESSES: Written comments should be submitted to: Financial Crimes Enforcement Network, P.O. Box 39, Vienna, Virginia 22183, Attention: PRA Comments—Cross-Border Survey. Comments also may be submitted by electronic mail to the following Internet address: regcomments@fincen.gov, with a caption in the body of the text, "Attention: PRA Comments—Cross-Border Survey."

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or requests for copies of the questions for the new cross-border survey that is the subject of this notice should be directed to: Financial Crimes Enforcement Network, Regulatory Policy and Programs Division at (800) 949–2732.

SUPPLEMENTARY INFORMATION: On December 17, 2004, President Bush signed into law S. 2845, the Intelligence Reform and Terrorism Prevention Act of 2004 (Act).¹ Among other things, the Act requires that the Secretary of the Treasury study the feasibility of "requiring such financial institutions as

the Secretary determines to be appropriate to report to the Financial Crimes Enforcement Network certain cross-border electronic transmittals of funds, if the Secretary determines that reporting of such transmittals is reasonably necessary to conduct the efforts of the Secretary against money laundering and terrorist financing." The report must identify what cross-border information would be reasonably necessary to combat money laundering and terrorist financing; outline the criteria to be used in determining what situations will require reporting; outline the form, manner, and frequency of reporting; and identify the technology necessary for Financial Crimes Enforcement Network to keep, analyze, protect, and disseminate the data collected. This survey seeks input from trade groups representing members of the U.S. financial services industry on the feasibility of requiring reporting of cross-border electronic transmittals of funds, and the impact such reporting would have on the industry.

Title 31 CFR 103.33 (e)–(g) provides uniform recordkeeping and transmittal requirements for financial institutions and are intended to help law enforcement and regulatory authorities detect, investigate and prosecute money laundering and other financial crimes by preserving an information trail about persons sending and receiving funds through the funds transfer system. Although the requirements for banks and non-bank financial institutions are similar, their respective rules contain different terminology. For the purposes of this document, when terminology for banks is used, the intent is for it to apply to the broader universe of financial institutions.

Under current regulations, for each payment order that it receives, a financial institution must obtain and retain the following information on funds transfers of \$3,000 or more: (a) Name and address of the originator; (b) the amount of the funds transfer; (c) the date of the request; (d) any payment instructions received from the originator with the payment order; (e) the identity of the beneficiary's bank; (f) and as much information pertaining to the beneficiary as is received, such as name and address, account number, and any other identifying information. Intermediary and beneficiary banks receiving a payment order are required to keep an original or a copy of the payment order. An originator bank is required to verify the identity of the person placing a payment order if it is made in person and if the person is not already a customer. Similarly, if a beneficiary bank delivers the proceeds

to the beneficiary in person, the beneficiary bank is required to verify the identity of that person if not already a customer.

The feasibility study will examine the advisability of imposing the requirement that financial institutions report to the Financial Crimes Enforcement Network certain of the transactions of which it must currently maintain records under those regulations. The intent of this survey is to gather information from the banking and financial services industries to assist in determining the feasibility and impact of such a reporting requirement. If feasible, the Act requires the Secretary to promulgate rules imposing a reporting requirement by December 2007. An inadequate understanding of the impact could result in ineffective regulations that impose unreasonable regulatory burdens with little or no corresponding anti-money laundering benefits.

We would appreciate receiving comments on this survey on or before April 15, 2006.

You may submit comments or questions about this survey by e-mail to eric.kringel@fincen.gov or by U.S. Mail to: Financial Crimes Enforcement Network, Post Office, Box 39, Vienna, VA 22183, Attn: Eric Kringel, Senior Policy Advisor. Thank you for your assistance.

Solely for purposes of clarity and in aiding respondents in your comments to the questions below, we propose the following definition:

Cross-Border Electronic Transmittal of Funds. Cross-border electronic transmittal of funds means any wire transfer in which either the originator or the beneficiary of the transfer is located in the United States and the other is located outside the United States. This term also refers to any chain of wire transfer instructions that has at least one cross-border element, and encompasses any such transfer in which an institution is involved as originator's institution, beneficiary's institution, intermediary, or correspondent, whether that institution's involvement involves direct transmission to or from a foreign institution. The definition does not include any debit transmittals, point-of-sale (POS) systems, transaction conducted through an Automated Clearing House (ACH) process, or Automated Teller Machine (ATM).

To the extent your member financial institutions can provide the following information, we would like responses to the questions outlined below. We are seeking general or aggregated information (i.e., "45% of our membership * * *") rather than

¹ Pub. L. 108–458, 118 Stat. 3638 (2004).

specific responses about particular institutions.

Background Information

1. Please characterize the institutions your organization represents (i.e., banks, broker-dealers, currency dealers or exchangers, casinos, money services businesses, etc.).

2. How would you further describe the institutions your organization represents by the primary nature of your business (i.e., community banks, credit unions, money center banks, money transmitters, specialized business lanes, etc.).

3. What is the approximate volume of the overall funds transfer business (by total number and aggregate dollar amount) your member institutions conduct over a one-year period?

4. What is the approximate volume cross-border electronic transmittals of funds (by total number and aggregate dollar amount) your member institutions send and receive over a one-year period?

To the extent possible, please estimate the percentage of cross-border electronic transmittal of funds sent or received by your member financial institutions, in the following categories (if applicable):

a. On behalf of their own customers,
 b. As an intermediary or correspondent for other institutions
 c. As internal settlement with their own institution's foreign affiliates or branches.

d. As the U.S. financial institution that directly transmitted the payment order to or accepted the payment order from a financial institution located outside of the United States.

5. Do your member institutions send or receive cross-border electronic transmittal of funds in-house or through a correspondent?

a. What systems (e.g., SWIFT, Fedwire, CHIPS, proprietary system) are used to send or receive cross-border funds transfers?

b. What is the proportional usage of each system if more than one system is used?

c. Are there instances when the system used is dictated by the nature of the transaction or customer instruction? If possible, please exclude those situations where the decision is due to the fact that the receiving financial institution does not use a particular system.

Existing Record Maintenance and Compliance Process

6. How do your member institutions maintain the funds transfer records required by 31 CFR 103.33 (i.e., message system logs or backups, wire transfer

instruction database, account history files, etc.)?

a. If the data is stored electronically, can the storage systems export such data into a spreadsheet or database file for reporting?

7. Approximately how many times in a one-year period does the government subpoena or otherwise issue a legal demand requiring your member institutions to produce cross-border wire transfer information?

Note: We understand that many requests seek "any and all records" pertaining to an account or subject. Where possible, please distinguish those requests from more specific requests for cross-border electronic transmittals of funds.

8. Can you estimate the approximate total cost (e.g., person-hours or other costs) to your member institutions in time and expense responding to these legal demands? If you cannot estimate the costs incurred, please describe generally the resources involved in complying with such requests.

Foreign Transactions

9. Do your member institutions or any of their branches, subsidiaries, or affiliates transmit or receive cross-border electronic transmittals of funds from a location in either Australia or Canada?

a. If yes, please briefly describe the measures taken, including the general estimates of the costs in time and expense incurred, to ensure compliance with the cross-border funds transfer reporting requirements in those jurisdictions and the measures in place to monitor and maintain compliance.

10. If the Department of the Treasury required reports of cross-border electronic transmittals of funds involving amounts over \$3,000, what general steps would your member institutions need to take (and how burdensome would it be) to comply?

a. Would the answer differ if the value threshold were \$10,000?

b. Would the answer differ if there were no value threshold?

c. How would these different thresholds affect the volume of the reporting from your member institutions?

d. How would the answer differ with the type of required reporting (e.g., electronic file upload, Web-based form)?

e. How would the answer differ with the timing of required reporting (e.g., real-time, end-of-day, within 30 days)?

f. To the extent possible, please estimate any cost increase for cross-border electronic transmittals of funds that may result.

g. To the extent possible, please describe any effects that reporting

requirements may have on the volume or value of cross-border electronic transmittals of funds.

Potential Impact on Financial Institutions

11. If the Department of Treasury required reports of cross-border electronic transmittals of funds in a SWIFT, CHIPS or other file format specified by the Department, what steps would your member institutions need to take to extract such data from existing records to submit the information as required?

12. If the Department of Treasury required reports of cross-border electronic transmittals of funds but also provided exceptions for certain customers or types of transactions (i.e., internal settlement, identical originator and beneficiary, transfers to government entities, etc.), what exemptions would you suggest?

a. How difficult would it be for your member institutions to build such exceptions into the business process for creating the report?

b. Would the costs to implement the exceptions outweigh the benefits?

13. If the Department of the Treasury required reports of cross-border electronic transmittals of funds, should the requirement be limited to certain institutions (e.g., only the originating institution, only the beneficiary's institution, only the U.S. financial institution that directly transmits the payment order to or accepts the payment order from a financial institution located outside of the United States)? Please explain the rationale for your response.

14. Can your member financial institutions' automated systems distinguish between domestic funds transfer and a cross-border electronic transmittal of funds?

15. Among the following definitions of "cross-border electronic transmittal of funds" what potential advantages and disadvantages do you perceive? Do you have any suggestions for such a definition or can you highlight any particular issues that should be addressed in such a definition?

(Note: All of the following definitions would exclude check, debit transmittal, ATM, or ACH payments.)

a. Cross-border electronic transfer of funds means any wire transfer where the originator's and beneficiary's institutions are located in different countries and one of the institutions is located in the United States. This term also refers to any chain of wire transfers that has at least one cross-border element

b. Cross-border electronic transfers of funds include transactions where either (1) a foreign office of a financial institution instructs a U.S. office of a financial institution to effect payment in the U.S., directly or indirectly, or (2) where U.S. office of a financial institution instructs a foreign office of a financial institution to effect a payment abroad, directly or indirectly.

c. Cross-border electronic transmittal of funds means the transmission—through any electronic, magnetic or optical device, telephone instrument or computer—of instructions for the transfer of funds, other than the transfer of funds within the United States. In the case of SWIFT messages, only SWIFT MT 100 and SWIFT MT 103 messages are included

d. Cross-border electronic transmittal of funds means an instruction for a transfer of funds that is transmitted into or out of the United States electronically or by telegraph, where the financial institution is acting on behalf of, or at the request of, another person who is not a financial institution

Title: Cross-Border Electronic Transmittals of Funds Survey.

OMB Number: 1506-0048.

Abstract: Survey to be conducted with business owners and managers in the Cross-Border Electronic Transmittals of Funds industry. Survey asks respondents to report on cross-border financial services provided by their businesses.

Type of Review: New information collection.

Affected Public: Business or other for profit institutions.

Frequency: One time.

Estimated Burden: Reporting average of 60 minutes per response.

Estimated Number of Respondents: 23,262.

Estimated Total Responses: 23,262.

Estimated Total Annual Burden

Hours: 23,262.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including

through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: March 14, 2006.

Robert Werner,

Director, Financial Crimes Enforcement Network.

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BILLING CODE 4810-02-P

DEPARTMENT OF THE TREASURY

Request for Comments on Treasury's Report to Congress on International and Exchange Rate Policies

AGENCY: Office of the Under Secretary for International Affairs, Treasury.

ACTION: Request for comments.

SUMMARY: The Office of the Under Secretary for International Affairs of the U.S. Department of the Treasury invites all interested parties to comment on the methodology used in preparing its semi-annual report to Congress on International and Exchange Rate Policies and to submit views on the contents of its next report.

DATES: Written comments must be received on or before April 7, 2006.

ADDRESSES: Comments may be submitted by mail, facsimile or email. All comments should contain the following information in the heading: "Attn: Request for Public Comments on the Report to Congress on International and Exchange Rate Policies."

Mailing address: Office of the Under Secretary for International Affairs, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Facsimile: (202) 622-2009 (not a toll-free number).

Email: ashby.mccown@do.treas.gov.

For further information concerning the submission of comments, refer to the heading "Request for Comments" in the SUPPLEMENTARY INFORMATION portion of this notice.

FOR FURTHER INFORMATION CONTACT: John Weeks, Director, Global Economics Unit, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 622-9885 (not a toll-free number), john.weeks@do.treas.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 3004 of Public Law 100-418 (22 U.S.C. 5304) requires, inter alia, that the Secretary of the Treasury analyze on

an annual basis the exchange rate policies of foreign countries, in consultation with the International Monetary Fund, and consider whether countries manipulate the rate of exchange between their currency and the United States dollar for purposes of preventing effective balance of payments adjustment or gaining unfair competitive advantage in international trade. Section 3004 further requires that: "If the Secretary considers that such manipulation is occurring with respect to countries that (1) have material global current account surpluses; and (2) have significant bilateral trade surpluses with the United States, the Secretary of the Treasury shall take action to initiate negotiations with such foreign countries on an expedited basis, in the International Monetary Fund or bilaterally, for the purpose of ensuring that such countries regularly and promptly adjust the rate of exchange between their currencies and the United States dollar to permit effective balance of payment adjustments and to eliminate the unfair advantage."

Section 3005 (22 U.S.C. 5305) requires, inter alia, the Secretary of the Treasury to provide each six months a report on international economic policy, including exchange rate policy. Among other matters, the reports are to contain the results of negotiations conducted pursuant to Section 3004. Each of these reports bears the title, Report to Congress on International Economic and Exchange Rate Policies, (the "Report").

Treasury is soliciting comments on the methods used by Treasury to analyze the economies and exchange rate policies of foreign countries in order to help improve the process of carrying out its responsibilities under Sections 3004 and 3005. The most recent Report can be found on the Web site of the Office of the Under Secretary for International Affairs, at <http://www.treas.gov/offices/international-affairs/economic-exchange-rates/>. Treasury is also soliciting views on approaches that might be fruitful in the upcoming spring 2006 Report.

Request for Comments

Comments must be submitted in writing by one of the methods specified in the ADDRESSES portion of this notice. All comments should contain the following information in the heading: "Attn: Request for Comments on the Report to Congress on International and Exchange Rate Policies." Comments must be received by April 7, 2006. Treasury requests that comments be no more than two pages in length.

The Office of the Under Secretary for International Affairs will not accept



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Richard R. Riese
Director
Center for Regulatory
Compliance
Phone: 202-663-5051
Riese@aba.com

April 21, 2006

Via Email

Financial Crimes Enforcement Network
Post Office Box 39
Vienna, VA 22183

Re: Cross-Border Survey
71 *Federal Register* 14289; March 21, 2006

Ladies and Gentlemen:

Thank you for the opportunity to provide input to your survey of cross border electronic transmittal (CBET) activity and to comment on the feasibility of adopting a reporting system for such transfers. To develop responses to the survey, ABA conducted conference calls with member representatives from the AML compliance and wire transfer operations departments of their institutions. In addition, some members provided, on a non-attribution basis, proprietary information about their cross-border wire transfer activity. However, ABA did not conduct a survey that enabled it to make membership-wide statements about their experience. Accordingly, we offer answers to the survey in the form of discrete observations or experiences submitted to us by a small, but diverse subset of our membership that we believe represent a variety of views characteristic of those held by the banking industry in general.

Background Information and Summary of Position

The American Bankers Association, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership--which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks--makes ABA the largest banking trade association in the country.

The US payment system is immensely complex, involving thousands of different institutions, operating across a wide variety of platforms, systems & payment methods. Daily volumes are massive and cannot in any way be compared with the experience in nations with existing CBET reporting requirements such as those in Australia & Canada. In most cases, the US payment system does not currently distinguish between domestic and cross-border transactions. Imposing a new requirement to include this type of information for all wire transfers would require substantial changes to US payment systems, as well as the internal systems of participating financial institutions.

ABA notes that US law enforcement agencies already have the ability to request relevant wire transfer data from financial institutions. However, in the banking industry's experience, this authority is not often used. In contrast to the current low level of law enforcement activity in this area, mandating a new reporting regime for CBET would impose substantial new compliance costs on financial institutions subject to the new rule far out of proportion with the law enforcement utility achieved. Combined with potential privacy concerns that the introduction of such a comprehensive cross border surveillance program would entail, these compliance burdens could provide an incentive to move business to offshore banks not subject to the reporting requirement.

ABA members remain unconvinced that FINCEN would be able to substantially benefit from the receipt of most of the reported information encompassed by a CBET reporting requirement. It is relevant to note in this regard that FINCEN already receives data from financial institutions on transactions of concern via the filings of SARs. As such, the ABA does not believe that the benefits to law enforcement associated with a virtually universal CBET reporting requirement would be worth the cost incurred by the American banking industry, nor the invasion of financial privacy suffered by US citizens and their businesses.

Responses to Survey Questions

Questions 3 & 4. ABA does not have a number that equates to a membership specific volume of funds transfer business activity conducted annually. However, our membership includes the industry's largest volume operations engaged in cross-border electronic transmittals (CBETs) and consequently accounts for the vast majority of transfers into and out of the United States every year.

A sample of the volume of overall funds activity reported by ABA members is quite diverse, and very impressive in terms of size. For instance, banks of less than \$10 billion in asset size reported low six figure transfers by number with a range of between 30 and 200 billion in dollar value. Larger institutions reported low seven figure transfers by number and between 2.5 and 15 trillion by dollar value—with the highest value reporter in this segment also being characterized as having several hundred billion dollars in assets under management. Finally, even those institutions generally considered among the nation's largest—but not necessarily leaders in CBETs—nonetheless reported tens of millions of wire transfers amounting to 50 to more than 150 trillion in dollar value annually.

Looking at CBETs alone, the larger institutions who are not among the banks usually identified as the industry's top leaders in CBETs, report in the range of 100 - 200 thousand cross border transfers a year valued at an even wider range of 8 billion to 2 trillion dollars. Several banks were not able to report numbers or volumes for all or parts of their international activity due to current system limitations. As a percentage of total fund transfer activity, CBETs represent somewhere between 5 and 50% of their total—but most were estimated at less than 20%.

Trying to apportion the volume of CBETs among those conducted on behalf of customers, as intermediaries, as internal settlements or as “last out, first in” institutions defies industry-wide conclusions. First some institutions do not have systems that allow them to make an accurate estimation of such a categorization of their activity. When an estimate can be ventured, the experience is diverse—but for most institutions the CBETs conducted for customers represents between 80 and 100% of their experience. Obviously leading institutions that hold themselves out as proficient in serving as correspondents for CBETs will estimate a larger volume of intermediary correspondent CBETs as well as transfers that qualify as “last out, first in.” An unscientific poll of bankers visiting ABA’s compliance web page revealed that only 1 in 4 respondents identified themselves as conducting “last out, first in” cross-border transfers.

Question 5. As suspected, many banks conduct their CBETs exclusively through a correspondent. Others conduct CBETs using both correspondents and in-house capabilities with varying percentage splits between the two. Fewer members conduct CBETs exclusively using in-house means.

This diversity of CBET experience is also reflected in the apportionment of transfers across systems used. Some members who transfer only through correspondents use exclusively Fedwire, whereas as others of this group report that they rely solely on SWIFT. Institutions that transfer using both in-house and correspondent accounts generally use both Fedwire and SWIFT—with many also using CHIPS and a few using a proprietary system. Some banks report that system choice is due to the fact that the receiving financial institution does not use a particular system, but this was not reported as a driver of their answers on the apportionment of use across systems.

Existing Record Maintenance and Compliance Process

Question 6. Responding to the question of funds transfer records systems illustrates another aspect of the diversity of the American banking industry—widely varied software solutions with differing capabilities. This variety of choice also represents differing degrees of investment and an election among record retention options. Many members reported having the capability of downloading CBETs to spreadsheets. Other institutions—including some of the largest—reported hurdles such as not being able to create reports for activity moved to their archive system or not being able to generate electronic reports from the system used for U.S dollar transfers.

Questions 7 & 8. Member experience with government subpoena of CBET information is generally characterized as rare. Most institutions reported fewer than 8 – 10 occasions a year on average. However, a report as high as 300 was also received. Costs attributed to these responses per institution varied with complexity of request and the member’s process for handling subpoenas generally. Members described research and retrieval effort, production staff time and supplies, compliance investigative unit involvement and legal office oversight. Given the infrequent occurrences, members did not translate this activity to cost figures of any confidence level. What is clear to all responding members is that a universal CBET

reporting regimen would be several orders of magnitude more expensive than the very limited subpoena process now applicable. It is also unlikely that CBET reporting requirement would eliminate subpoenas. Chances are that subpoenas would increase as reported CBETs are used to generate more investigative red flags that demand more in depth law enforcement inquiry to confirm or dismiss concerns.

Foreign transactions

Question 9. ABA members whose affiliates transmit or receive CBETs from locations in Australia or Canada have offered a few observations: Even with just two operating platforms, one bank stated that establishing the reporting process took over a year and considerable resources and coordination with existing IT partners as well as the purchase of additional third-party software. Because Canadian obligations require reporting aggregated CBETs within a 24 hour period totaling over \$10,000 for one originator, a bank will face more complicated IT logic to accomplish the aggregation function before reporting. Using a “last out, first in” reporting obligation leaves larger banks with the reporting burden, but for some it required less IT logic to be built into the reporting system. Banks with experience in Australia note that they are dealing with a couple thousand transfers a month versus millions a month coming out of the US market. This multiple orders of magnitude difference defies scalability between the Australian system and any prospective US reporting system.

Question 10. Generally, the steps each reporting institution would face to create a compliant reporting system would include evaluating the scope of the final reporting requirements and assessing gaps between new and old systems, having vendors modify their software, designing and creating new databases to keep data for reporting purposes, conducting significant training of staff, monitoring processes to assure compliance and engaging in audit reviews.

More specific member comments noted: a manual spreadsheet would have to be maintained for outgoing foreign wires, incoming wires from Fedwire are conducted as “straight through processing” and would need to be reviewed individually after receipt and a manual record be created—all requiring additional staff; some wire systems do not populate country code necessitating a vendor enhancement; a new program would be necessary to capture required data for reporting; existence of SWIFT messages is main method of separating domestic from cross-border transfers, but misses payments sent by Fedwire without SWIFT instructions, existing systems would need to be mapped to reporting format ultimately required by federal regulation.

Estimating the costs for these undertakings is very difficult, let alone trying to determine how they might vary depending on certain parameters. Real time and end of day reporting are not available from some existing systems. Thresholds—as long as there is no aggregation requirement—are not particularly complicating system wise—but distinctions can involve compliance monitoring challenges especially if the notion of structuring is applied to wire activity. Because system modifications compete for scheduling with core business demands and are budgeted over periods

of many quarters, a reporting regime cannot be implemented without long transition periods.

As for the cost impact on customers, some members believe that the expense of system changes and maintenance of reporting could affect transfer commissions. Some banks expressed the concern that U.S. dollar transactions could be impacted adversely if customers saw off-shore banks offering dollar transfers. For institutions with limited cross-border traffic that they handle directly, costs of reporting could drive some banks, that have insufficient market share to implement efficiencies or price transfers effectively, out of the business and promote consolidation of traffic in fewer direct providers.

Potential Impact on Financial Institutions

Question 12. If reporting were required in a SWIFT or CHIPS format banks would still need to develop a reporting capacity to append to their business systems just to aggregate and pass along the information in existing systems to the government.

Question 13. The value of exemptions/exceptions from reporting depends on their being simple, voluntary and not subject to a qualification process, compliance requirements, supervisory criticism or government enforcement. For instance, excluding internal settlements from reporting may eliminate converting specialized proprietary systems in some banks. Exempting transfers to or from government entities may enable some banks to segregate entire segments of their business activity in a cost effective manner; provided we can all agree on what constitutes a “government entity.” However, subjecting banks to supervisory criticism for failing to parse the qualifications for exemptions can quickly complicate matters and incur associated costs or regulatory risk that would outweigh any benefit from using the exemptions.

Question 14. An answer to the question of whether the reporting requirement should be limited to certain banks is ultimately dependent on how CBETs are defined. If one seeks to capture the actual funds payment, then you are going to be focused on a Fedwire or CHIPS transfer. In this situation a “last out, first in” reporting obligation would suffice to capture the cross border transfer of funds and whatever information is attached to that transmittal. Although this method shifts much of the reporting burden to a smaller number of generally larger banks, many of the possess sufficient capacity to perform the reporting with greater efficiency than would be the case if the obligation rested with all originating or beneficiary’s institutions.

Nevertheless, if CBETs were defined to encompass only SWIFT MT 103 messages, then the reporting obligation would most likely require the originators or recipient’s bank to report. This approach contains all travel information, but simplifies reporting by eliminating correspondent transfers of the money involved and excludes bank to bank settlement transfers.

Question 15. Our sampling of banks’ capabilities to distinguish between domestic and cross border transfers through their existing automated systems reveals mixed

results. Some banks have this capacity for all means of transmittal. Other banks can only distinguish cross border transfers as those associated with SWIFT messages and those that are not—hardly a fail safe method. Banks relying on Fedwire advise us that the best solution for distinguishing between domestic and cross-border transfers would be having the Federal Reserve develop a new message type for transaction through its system. Most banks report a need to reprogram their proprietary systems or their vendors' systems to make the distinction between domestic and cross-border transmittals.

Question 16. As noted in responding to question 14, how one defines CBETs will effect the ultimate reporting obligation. The FinCEN Survey suggests four variants that create differing operative terms and generate different categories of captured transmittals. This then leads to the idea of limiting the reporting obligation to “last out, first in.” Any all encompassing definition must deal with the variability of transmittal systems (e.g., Fedwire, CHIPS, SWIFT) that would be employed to achieve the conduct the transfer being captured. This in turn leads to a plethora of information systems, data formats, and compliance complications.

At this stage of evaluating the feasibility of instituting a cross-border wire reporting obligation, it is premature for ABA to recommend a single solution to the challenges faced. However, we suggest that implementing a comprehensive reporting program need not be the immediate objective. We should recognize that capturing only certain SWIFT messages, for instance, will generate terabytes of data not previously available to law enforcement—even if there would be information missed by selecting one channel to the exclusion of another. From a feasibility standpoint, ABA proposes for discussion whether piloting a single channel specific reporting requirement and then evaluating what has been achieved from a law enforcement perspective for what cost from an economic and privacy basis, isn't a preferred alternative to attempting to implement a comprehensive definition-and-exception driven cross-border, cross-system regime.

In organizing this discussion, we suggest that law enforcement evaluate the information available from a particular channel as it is currently available in its existing format and consider the additional utility that would be garnered without imposing any more requirements on banks to alter their present data systems. In other words, ABA urges law enforcement to exhaust information available from established data collection formats, before creating new information elements that are not driven by present business necessity. We believe this step is a fundamental part of addressing CBET reporting feasibility.

In evaluating the single channel approach, ABA wants to stress that even a reporting obligation based on existing transaction activity and message formats will still compel some system enhancements to enable tapes or other reports to be created and filed. Furthermore, regardless of the nature of any imagined reporting requirement, the financial services industry's responsibility should extend only to the simple transmittal of raw data, with FINCEN assuming full responsibility for the refinement and distillation of the data into a format useful to law enforcement agencies.

Conclusion

In summary, ABA contends that the prospect of mandating cross border electronic transmittal reporting will face substantial cost barriers for changing systems including the virtually prohibitive expenses in adding information elements to existing transaction information flows. In contrast to the current low level of law enforcement activity in this area, mandating a new reporting regime for CBET would impose substantial new compliance costs on financial institutions subject to the new rule far out of proportion with the law enforcement utility achieved and would incur unjustified government incursion into the financial privacy of U.S. citizens and their legitimate business conduct.

ABA and its members are available to participate in further discussions with regard to the prospects for cross border transfer reporting should there be future efforts to impose such an obligation.

Respectfully submitted,



Richard R. Riese
Director, Center for Regulatory Compliance



April 17, 2006

Mr. Eric Kringel
Senior Policy Advisor
Financial Crimes Enforcement Network
Post Office Box 39
Vienna, VA 22183

Re: Financial Institution Survey Regarding Cross-Border Electronic Transmittals of Funds

Dear Mr. Kringel:

America's Community Bankers (ACB)¹ is pleased to respond to the Financial Crimes Enforcement Network's (FinCEN) feasibility study regarding cross-border electronic transmittals of funds. FinCEN is evaluating whether it would be appropriate for financial institutions to report information about cross-border funds transmittals. It is also studying the impact that such a reporting requirement would have on the financial services industry. This study is required by the Intelligence Reform and Terrorist Prevention Act of 2004.

ACB requested members of three ACB committees to complete FinCEN's survey. The committees were:

- Regulation and Compliance Committee
- Retail Banking, Operations, Security & Technology Committee; and
- Electronic Banking and Payment Systems Committee.

The bankers that participate on these committees were the most appropriate persons within their institutions to review and complete the survey. Nevertheless, the response rate to the survey was very low. This may be attributable to a multiple factors, including:

- The length of the survey.
- The degree of internal research required to respond to the survey.

¹ America's Community Bankers is the member driven national trade association representing community banks that pursue progressive, entrepreneurial and service-oriented strategies to benefit their customers and communities. To learn more about ACB, visit www.AmericasCommunityBankers.com.

Financial Institution Survey Regarding Cross-Border Electronic Transmittals of Funds
April 17, 2006
Page 2

- The short time to respond to the survey.
- Limited staff time due to regulatory demands placed on community bank compliance and operations employees.

While the responses we received do not represent a statistically valid sample of ACB's membership, we were able to discern possible trends within the community banking industry and received pertinent comments from ACB members who engage in cross-border transactions. The following are some general comments regarding community bank involvement in cross-border transactions.

- The volume and dollar value of cross-border transactions originated by community banks varies significantly across the community banking industry.
- Most community banks that provide cross-border transfers provide this service only to their customers.
- Most community banks use a correspondent bank to provide cross-border transactions. As a result, most community banks do not deal directly with institutions located outside of the United States. Any reporting requirement should be limited to institutions that transmit funds directly to a foreign bank. The Department of the Treasury would still receive data about cross-border transfers originated by community banks, but that information would come from the correspondent. This approach would avoid placing additional regulatory burdens on community banks whose resources may also often be constrained.
- Community banks believe that the additional reporting requirements will add additional time to the processing of these transfers and that the requirements would be labor intensive.

FinCEN will weigh many factors as it analyzes the survey results and determines whether to impose additional reporting requirements on financial institutions. We specifically request FinCEN to consider the cumulative regulatory burden shouldered by the nation's community banks and to balance any new compliance requirements with the size and capacity of the depository institution.

Thank you for the opportunity to assist in collecting information regarding cross-border transfers. Should you have any questions, please contact the undersigned at 202-857-3187 or kshonk@acbankers.org.

Sincerely,



Krista J. Shonk
Regulatory Counsel



CUNA & Affiliates
A Member of the Credit Union System

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National Association, Inc.**

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Web Site:
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April 14, 2006

Eric Kringle
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

Re: PRA Comments – Cross Border Survey

Dear Mr. Kringle:

The Credit Union National Association (CUNA) appreciates the opportunity to provide feedback, on behalf of our credit union members, on the cross-border electronic transmittals of funds (transfers). By way of background, CUNA is the largest credit union trade association, representing 87% of our nation's 8,900 state and federal credit unions, which serve nearly 87 million members.

As mandated by Congress, the Treasury, through the Financial Crimes Enforcement Network (FinCEN), is seeking input from trade groups representing members of the U.S. financial services industry on the feasibility of requiring reporting of cross-border electronic transmittals of funds, and the impact such reporting would have on the financial services industry.

CUNA commends FinCEN for seeking input from credit unions and other financial institutions through trade groups on the feasibility of reporting certain information on cross-border transfers and support efforts to combat money laundering and terrorist financing.

However, mandating that financial institutions must segregate cross border transfers from domestic transfers may be problematic, especially for smaller institutions. Smaller credit unions typically send and receive wire transfers through a correspondent, which is generally a corporate credit union or larger financial institution. When a transfer is received by a correspondent, the domestic and cross border transfers are not distinguished. Credit unions would need to establish procedures that would differentiate cross border transfers from domestic transfers and maintain this information in a separate database for reporting purposes.

In addition to procedures to segregate cross border transfers, credit unions would need to establish additional recordkeeping procedures to implement any reporting requirements. Currently, some credit unions, typically those with

smaller assets, maintain records by filing wire information by account number in members' account histories, rather than by date. This enables credit unions to retrieve information on a particular account, including any electronic transfers as needed. This information is typically requested in response to government subpoenas, which tend to request specific account information and transaction histories rather than requesting cross border transfer information on particular dates. If cross border transfer information would be required to be reported, data processing systems would need to be upgraded to enable credit unions to retrieve the required information. This may be challenging for smaller credit unions, particularly those using a third party, such as a corresponding institution, to complete the transfer.

Thank you for the opportunity to comment on these important issues. Please contact me at 202-508-6733 or LThomas@cuna.coop if you have any questions or would like to discuss the impact cross border transfer reporting would have on credit unions.

Sincerely,

Lilly Thomas
Assistant General Counsel



TERRY J. JORDE
Chairman
JAMES P. GHIGLIERI, JR.
Chairman-Elect
CYNTHIA BLANKENSHIP
Vice Chairman
KEN PARSONS, SR.
Treasurer
ROBERT C. FRICKE
Secretary
DAVID E. HAYES
Immediate Past Chairman

CAMDEN R. FINE
President and CEO

April 26, 2006

Mr. Eric Kringle
Senior Policy Advisor
Financial Crimes Enforcement Network
P. O. Box 39
Vienna, Virginia 22183

Re: Cross-Border Electronic Transmittals of Funds Survey

Dear Eric:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to offer comments on the cross-border wire survey being conducted by the Financial Crimes Enforcement Network (FinCEN). The survey seeks comments from trade association representatives on the feasibility of requiring reporting of cross-border electronic transmittals of funds, as required by section 6302 of the Intelligence Reform and Terrorism Prevention Act of 2004.

General Comments

At the outset, ICBA believes several key points should be stressed. First, the impetus for the survey was reporting systems used in Australia and Canada. However, the banking system in the United States is substantially different and far more diverse than the banking systems in either of those countries, making it difficult – if not impossible – to draw parallels to their reporting mechanisms.

Second, even if the development of an automated system is possible, the costs and burdens for filing such reports are likely to far exceed the benefits. While banks are currently required by the Bank Secrecy Act to track the information, it is not likely to be

¹ The Independent Community Bankers of America represents the largest constituency of community banks of all sizes and charter types in the nation, and is dedicated exclusively to representing the interests of the community banking industry. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.

With nearly 5,000 members, representing more than 18,000 locations nationwide and employing over 265,000 Americans, ICBA members hold more than \$876 billion in assets \$692 billion in deposits, and more than \$589 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

tabulated or organized in a format that lends itself to easy reporting. Therefore, any new reporting requirement would require substantial time and investment, detracting from other resources used for Bank Secrecy Act compliance. Community banks are already over-burdened by a vast array of regulatory requirements, especially smaller institutions. As new requirements are added, more community banks report seriously assessing whether to sell to larger institutions or otherwise cease independent operations because of the disproportionate impact of regulatory burdens on smaller institutions.

Third, even if the data is reported, FinCEN must be able to devote sufficient resources to collect, store and analyze the data. Without sufficient expenditures and resources to analyze the data, it will not provide useful information. Moreover, any database that FinCEN constructs must include resources devoted to incorporating sufficient protections to ensure access to the database is properly restricted and that the data is adequately safeguarded to avoid problems such as identity theft, misappropriation of information or other problems.

Finally, for a new data collection regime to be worthwhile, assuming the hurdles of collecting and analyzing the data can be overcome, the data must be demonstrably useful to law enforcement. Additional data that law enforcement cannot or does not use for investigations or prosecutions does little to further the goals of the BSA. Law enforcement should also explain why this new data collection will provide information that is not currently available from other sources.

Cross-Border Wire Survey

Background Information

To collect data to respond to FinCEN's survey, ICBA forwarded the survey to a number of bankers in a variety of community banks across the country. The bankers surveyed included banks of various sizes and in various communities. Perhaps due to the extent of the survey, the limited time to respond, and the subject matter, response levels were not statistically valid. However, several key points emerged that can be useful for the feasibility study.

Community banks that responded to the survey indicated overall wire activity ranging from 275 to 180,000 wires annually and aggregating anywhere between \$3 million and \$300 billion. Overall, only a small percentage of wire transactions was cross-border activity.² For the most part, cross-border wire services are restricted to established customers well-known to the bank. Cross-border wire activity ranged from virtually none to well over 1000 transfers annually (both incoming and outgoing) that aggregated up to \$20 million. Independent community banks did not offer correspondent cross-border wire services, but a number of bankers' banks³ offer cross-border wire

² It is important to recognize that community banks located along the Canadian and Mexican borders are more likely to engage in cross-border wire transfer activity.

³ Bankers' banks are correspondent banks that provide a variety of correspondent services for community banks.

services. None of the community banks that responded to the survey offered internal settlement services for their own foreign affiliates or branches.

Since most of the cross-border wire transfer activity conducted by community banks is done through correspondent banks, none of the banks that responded to the survey executed the actual transfer across the border. Most of the banks reported using either Fedwire or SWIFT for overall wire services, with Fedwire being the predominantly preferred wire service.⁴

Existing Record Maintenance and Compliance Process

Community banks report using a variety of mechanisms to comply with existing wire record retention requirements. Most use manual systems or Excel spreadsheets to track the information, although some use software to track the information. Most reported that the information could be transferred electronically for reporting. However, because many community banks maintain the information manually, a new reporting requirement would likely prove more burdensome for smaller institutions, causing some smaller community banks to cease offering wire transfer services if the reporting requirement is adopted.

Few community banks reported having been subpoenaed by the government to provide cross-border wire information, with the exception of one bankers' bank.

Foreign Transactions

As noted above, few of the community banks that responded to the survey reported conducting cross-border wires. However, those located in states near the Canadian border reported activity to and from Canada. Generally, the banks reported using OFAC compliance or other software for tracking and reporting, although the banks were unable to give accurate estimates of time and costs.⁵

If Treasury required reporting of cross-border wires, it would entail creation of new policies and procedures by community banks. This would be necessary no matter what threshold for reporting was adopted, although the general consensus is that it would be simpler to track and report cross-border wires as the threshold increased. However, any new reporting requirement would be costly and burdensome to implement, and a number of community banks indicated it would very likely require investment in new software to track the information.

Generally, the more time allowed for a community bank to report the information was preferable. Existing software would make real-time or end-of-day reporting difficult, and any requirement to furnish information real-time or end-of-day would likely entail expensive solutions. Moreover, because community banks report working through

⁴ Those that used SWIFT or Fedwire for cross-border transfers reported that between 78% and 97% was conducted over Fedwire.

⁵ Because cross-border wire activity for those few community banks that reported offering the service was part of their overall wire operations, the ability to segregate activity to one country or to segregate international and domestic wires was limited.

correspondent institutions for much of their wire activity, especially any cross-border wires, some information would not be readily available to the community bank.⁶

Potential Impact on Financial Institutions

If the reporting of cross-border wires were instituted, community banks would have to make arrangements with their correspondent banks to obtain some of the information. More detailed reporting requirements would entail commensurately more burden. And, to a certain extent, community banks would have to rely on software vendors to provide the appropriate tools to segregate and report the information in the formats required.⁷

Generally, community banks believe that the initial set-up to meet a new reporting requirement would be the most burdensome part of the process. For many of the community banks that responded to the survey, their current levels of cross-border wire activity would allow them to provide the information manually, but that could become more difficult if volume of cross-border wire activity increased. There seemed to be some preference for the originating institution as the most logical bank in the chain to report, since that bank would have the most information about the transaction. However, it is also important to recognize that community banks noted they would rely on correspondent banks to furnish additional information about the transaction to provide a full report. And, others firmly believe that the bank that actually sent the wire across the border (the last bank in the chain) would be the most logical reporting entity. Overall, though, community banks reported their existing systems allow them to distinguish between domestic and cross-border funds transfers.

Definition of "cross-border electronic transmittal of funds." There was no clear consensus among the community bankers who responded to the survey as to a particular definition for cross-border wire. However, there seemed a preference for the first definition⁸ as the most simple, most easily understood and easiest to apply.

Conclusion

ICBA firmly supports the federal government's efforts against money-laundering and terrorist financing. However, it is also critically important that the limited resources of financial institutions, government agencies and law enforcement be devoted to truly suspicious activities and not assessment of routine transactions. While additional data

⁶ The community banks indicated that, depending on the information required in the report, they would have to obtain the information from their correspondent bank before filing accurate reports.

⁷ If Treasury and FinCEN were to provide the software necessary to track and report the information, that would go a long way to addressing the burden of these requirements, but would not eliminate the burden.

⁸ "Cross-border electronic transfer of funds means any wire transfer where the originator's and beneficiary's institutions are located in different countries and one of the institutions is located in the United States. This term also refers to any chain of wire transfers that has at least one cross-border element."

may be useful to law enforcement, the only way that data can be truly useful is if it can be processed and analyzed in a timely fashion. And, any database must include sufficient safeguards to ensure the information is properly protected.

Overall, ICBA questions whether the information contemplated in a cross-border wire transfer reporting system would provide benefits that would outweigh the burdens. The added costs to wire transfers could drive an increasing number of transactions underground where information about the transactions is much less readily transparent or available to law enforcement. And, the increased costs with a new reporting system could also drive legitimate community bank providers away from providing this service, leaving an increasingly fertile environment for underground providers. These are critical points to factor into any feasibility study of requiring a new reporting regime.

Thank you for the opportunity to comment. If you have any questions or need additional information, please feel free to contact me.

Sincerely,



Robert G. Rowe, III
Regulatory Counsel

From: David Landsman [david@nmta.us]
Sent: Friday, May 05, 2006 11:55 PM
To: Comments, Regulation
Subject: Attention: PRA Comments-Cross-Border Survey
Attn: Mr. Eric Kringel
Senior Policy Advisor
Financial Crimes Enforcement Network
Alexandria, VA

By Email to: regcomments@fincen.gov

Dear Mr. Kringel:

The National Money Transmitters Association appreciates the opportunity to comment on the proposed collection of data on the cross-border electronic transmittals of funds conducted through our nation's financial institutions.

Our answers to the survey's numbered questions appear below. Below that, is a comprehensive list intended to illustrate the type of data fields our larger members' systems normally retain for all transactions, and are capable of reporting in digital form.

Comments were invited on the following issues:

- a) **Whether the collection of information is necessary or useful** – We believe the data may be useful for specifically-targeted retrospective financial investigations, as well as statistical surveys. We think, however, that FinCEN should plan and specify to the public, the way the data will be used, before embarking on the collection program.
- b) **The accuracy of the agency's estimate of the burden** – The agency correctly estimated the amount of time required to answer the survey itself, but the proposed data collection program requires close study as to the time and expense that will be required of all financial institutions, on an ongoing basis, should these requirements be adopted.
- c) **Ways to enhance the quality, clarity and utility of the information collected** – We recommend that FinCEN provide free money transfer software to smaller firms that have trouble affording it, standardize a common field structure for reports, and we urge the IRS to coordinate data collection efforts with the various state banking departments.
- d) **Ways to minimize the burden** – See response to (c)
- e) **Estimates of cost** – For those companies that already have advanced IT systems, the burden will be minimal. For those smaller institutions that may still be struggling, the cost of compliance will be prohibitive. For that reason, we recommend that free money transfer software be distributed, that will be capable of not only producing the cross-border reports, but have built-in anti-structuring and OFAC-checking features.

New requirements must be introduced slowly, as smaller entities may be incapable of complying and should not be criminalized as a result. On the other hand, fairness demands that all operators be made to play by the same rules, otherwise uneven costs will tilt the playing field.

It is for this reason that the NMTA believes that any new requirement must come with a commitment from FinCEN and the IRS to analyze the barriers to compliance, and assist money services businesses of all sizes to overcome those barriers in the most economical way. A pilot program with voluntary compliance may be useful in the beginning, in order to gain experience in these untested waters. The answers to the survey below are based on the assumption that we are referring to companies such as our larger members, who have already built sophisticated data systems.

Sincerely,

David Landsman
Executive Director
The National Money Transmitters Association, Inc.
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(917) 921-9529 cell
(516) 829-2742 office
(516) 706-0203 e-fax
david@nmta.us
www.nmta.us

Background Information

1. Please characterize the institutions your organization represents (i.e., banks, broker-dealers, currency dealers or exchangers, casinos, money services businesses, etc.).

Money services businesses.

2. How would you further describe the institutions your organization represents by the primary nature of your business (i.e., community banks, credit unions, money center banks, money transmitters, specialized business lanes, etc.).

Currently, 43 state-licensed money transmitters.

3. What is the approximate volume of the overall funds transfer business (by total number and aggregate dollar amount) your member institutions conduct over a one-year period?

\$16,165,634,193 in 68,039,457 transactions, for an average of \$237.59 per transaction

4. What is the approximate volume cross-border electronic transmittals of funds (by total number and aggregate dollar amount) your member institutions send and receive over a one-year period?

Same as above.

To the extent possible, please estimate the percentage of cross-border electronic transmittal of funds sent or received by your member financial institutions, in the following categories (if applicable):

- a. on behalf of their own customers,
- b. as an intermediary or correspondent for other institutions
- c. as internal settlement with their own institution's foreign affiliates or branches.
- d. as the U.S. financial institution that directly transmitted the payment order to or accepted the payment order from a financial institution located outside of the United States.

a. on behalf of their own customers: 100%

5. Do your member institutions send or receive cross-border electronic transmittal of funds in-house or through a correspondent?

Normally, foreign correspondents are used, i.e. either bank or non-bank financial institutions abroad

- a. What systems (e.g., SWIFT, Fedwire, CHIPS, proprietary system) are used to send or receive cross-border funds transfers?

N/A

- b. What is the proportional usage of each system if more than one system is used?

N/A

- c. Are there instances when the system used is dictated by the nature of the transaction or customer instruction? If possible, please exclude those situations where the decision is due to the fact that the receiving financial institution does not use a particular system.

N/A

Existing Record Maintenance and Compliance Process

6. How do your member institutions maintain the funds transfer records required by 31 C.F.R. § 103.33 (i.e., message system logs or backups, wire transfer instruction database, account history files, etc.)?

Electronically

- a. If the data is stored electronically, can the storage systems export such data into a spreadsheet or database file for reporting?

Yes

7. Approximately how many times in a one-year period does the government subpoena or otherwise issue a legal demand requiring your member institutions to produce cross-border wire transfer information?

Approximately 12 times per year, any and all records pertaining to a customer or agent

NOTE: We understand that many requests seek "any and all records" pertaining to an account or subject. Where possible, please distinguish those requests from more specific requests for cross-border electronic transmittals of funds.

8. Can you estimate the approximate total cost (e.g., person-hours or other costs) to your member institutions in time and expense responding to these legal demands? If you cannot estimate the costs incurred, please describe generally the resources involved in complying with such requests.

Transaction records in electronic form, agent or customer folders, correspondence, relevant BSA reports (CTRs, SARs, etc.), accounting records.

Foreign Transactions

9. Do your member institutions or any of their branches, subsidiaries, or affiliates transmit or receive cross-border electronic transmittals of funds from a location in either Australia or Canada?

Unknown

- a. If yes, please briefly describe the measures taken, including the general estimates of the costs in time and expense incurred, to ensure compliance with the cross-border funds transfer reporting requirements in those jurisdictions and the measures in place to monitor and maintain compliance.

N/A

10. If the Department of the Treasury required reports of cross-border electronic transmittals of funds involving amounts over \$3,000, what general steps would your member institutions need to take (and how burdensome would it be) to comply?

Establishing a query following the requested format, and producing a digital file for email once a month should not be a problem.

- a. Would the answer differ if the value threshold were \$10,000?

No

- b. Would the answer differ if there were no value threshold?

No

- c. How would these different thresholds affect the volume of the reporting from your member institutions?

Not at all

- d. How would the answer differ with the type of required reporting (e.g., electronic file upload, Web-based form)?

Electronic file upload would be more efficient

- e. How would the answer differ with the timing of required reporting (e.g., real-time, end-of-day, within 30 days)?

No more frequently than once a month, please, with 15 days' lead time.

- f. To the extent possible, please estimate any cost increase for cross-border electronic transmittals of funds that may result.

None

- g. To the extent possible, please describe any effects that reporting requirements may have on the volume or value of cross-border electronic transmittals of funds.

None

Potential Impact on Financial Institutions

11. If the Department of Treasury required reports of cross-border electronic transmittals of funds in a SWIFT, CHIPS or other file format specified by the Department, what steps would your member institutions need to take to extract such data from existing records to submit the information as required?

N/A

12. If the Department of Treasury required reports of cross-border electronic transmittals of funds but also provided exceptions for certain customers or types of transactions (i.e., internal settlement, identical originator and beneficiary, transfers to government entities, etc.), what exemptions would you suggest?

We would not suggest any exemptions, but be aware that some duplication will occur since much of our volume goes through banks.

- a. How difficult would it be for your member institutions to build such exceptions into the business process for creating the report?

Very

- b. Would the costs to implement the exceptions outweigh the benefits?

Yes

13. If the Department of the Treasury required reports of cross-border electronic transmittals of funds, should the requirement be limited to certain institutions (e.g., only the originating institution, only the beneficiary's institution, only the U.S. financial institution that directly transmits the payment order to or accepts the payment order from a financial institution located outside of the United States)? Please explain the rationale for your response.

Volume done in the role of intermediary financial institutions should be labeled as such, but not exempted.

14. Can your member financial institutions' automated systems distinguish between domestic funds transfer and a cross-border electronic transmittal of funds?

Yes

15. Among the following definitions of "cross-border electronic transmittal of funds" what potential advantages and disadvantages do you perceive? Do you have any suggestions for such a definition or can you highlight any particular issues that should be addressed in such a definition? (NOTE: All of the following definitions would exclude check, debit transmittal, ATM, or ACH payments.)

- a. Cross-border electronic transfer of funds means any wire transfer where the originator's and beneficiary's institutions are located in different countries and one of the institutions is located in the United States. This term also refers to any chain of wire transfers that has at least one cross-border element
- b. Cross-border electronic transfers of funds include transactions where either (1) a foreign office of a financial institution instructs a U.S. office of a financial institution to effect payment in the U.S., directly or indirectly, or (2) where U.S. office of a financial institution instructs a foreign office of a financial institution to effect a payment abroad, directly or indirectly.
- c. Cross-border electronic transmittal of funds means the transmission — through any electronic, magnetic or optical device, telephone instrument or computer — of instructions for the transfer of funds, other than the transfer of funds within the United States. In the case of SWIFT messages, only SWIFT MT 100 and SWIFT MT 103 messages are included
- d. Cross-border electronic transmittal of funds means an instruction for a transfer of funds that is transmitted into or out of the United States electronically or by telegraph, where the financial institution is acting on behalf of, or at the request of, another person who is not a financial institution

We prefer this last definition; simpler is usually better, but we suggest, instead of the exception for a person "who is not a financial institution,"

the phrase, “not in the role of intermediary financial institution, as already defined in the regulations.

Appendix: Illustrative list of fields that are routinely kept by licensed money transmitters.

Report Header Information:

- Reporting entity
- Entity type
- Date range
- Amount range
- Origin
- Order types

Invoice Fields:

- Invoice Number
- Invoice Date
- Invoice Time
- Any other ref #
- Internal Comments (e.g. memo fields related to investigations and complaints, messages from sender to receiver)
- Code Words

Status Fields:

- Open
- Paid (if paid, Date paid, ID shown)
- Pending
- Suspended (compliance hold, OFAC hold, OFAC block, credit hold, etc.)
- Void / Cancelled (by Agent, by Central Office, by Payer)
- Compliance Flag (if any)

Sender and Receiver Fields:

- (Possible additional 'on-behalf-of' sender, multiple senders, alternative beneficiaries.)
- FN, LN, MI, Full Name
- Address, City, State, Zip, Country, Phone
- ID Type, ID Number, ID Issuer, and expiration date
- Date of Birth
- Occupation

Amount Fields:

- US Net Transmission Amount, Foreign Equivalent Transmission Amount, Rate
- Settlement rates and amounts and distribution
- Total Due from Agent
- Commissions (%) and Fees (\$) broken down by distribution
- Total Fees and commissions charged to consumer (in USD)

Destination (Beneficiary's) Bank (if any):

- Bank Name
- Bank Address
- Branch Number
- Account #
- Account Type

Paying and Receiving Agent Data:

- Name and Full Address, sub-locations, location codes

Names and Approvals:

Agent Operator	HQ Operator
Agent Manager	HQ Approver

Please note: This listing does not discuss data validation rules or field structure issues.



May 5, 2006

Russell W. Schrader
Senior Vice President
Assistant General Counsel

By Electronic Delivery

Department of the Treasury
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

Re: Attention: PRA Comments—Cross-Border Survey

Dear Sir or Madam:

This letter is submitted on behalf of Visa U.S.A. Inc. in response to the request for public comment (“Notice”) by the Financial Crimes Enforcement Network (“FinCEN”), published in the Federal Register on March 21, 2006.¹ The Notice seeks comment on a survey to obtain information from the banking and financial services industries to assist in determining the feasibility and impact of implementing a new reporting requirement for cross-border electronic transmittals of funds under the Bank Secrecy Act (“BSA”). Visa supports FinCEN’s decision to seek comment from individual banking institutions and financial services industry trade associations, and appreciates the opportunity to comment on this important matter.

The Visa Payment System, of which Visa U.S.A.² is a part, is the largest consumer payment system, and the leading consumer e-commerce payment system, in the world, with more volume than all other major payment cards combined. In calendar year 2005, Visa U.S.A. card purchases exceeded a trillion dollars, with over 510 million Visa cards in circulation. Visa plays a pivotal role in advancing new payment products and technologies, including technology initiatives for protecting personal information and preventing identity theft and other fraud, for the benefit of Visa’s member financial institutions and their hundreds of millions of cardholders.

EXEMPTION FOR CERTAIN TRANSACTIONS UNDER CURRENT RULES

The current rules under the BSA require covered financial institutions to create and retain records of specified transactions, including transmittals of funds. For example, if a “transmittal of funds,” as defined by the BSA rules,³ is in the amount of \$3,000 or more,

¹ Cross-Border Electronic Transmittals of Funds Survey, 71 Fed. Reg. 14,289 (Mar. 21, 2006).

² Visa U.S.A. is a membership organization comprised of U.S. financial institutions licensed to use the Visa service marks in connection with payment systems.

³ 31 C.F.R. § 103.11(jj). We refer to “transmittal of funds,” and the corresponding requirements that apply to non-bank financial institutions, solely for the sake of using terminology consistent with the Notice, even

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San Francisco, CA 94119-4607
U.S.A.

Department of the Treasury
Financial Crimes Enforcement Network
May 5, 2006
Page 2

the financial institution that accepts the transmittal order must create a record containing particular items of information about the order, including the name and address of the transmitter, the amount of the transmittal order, and certain information to identify the recipient.⁴ In addition, both the financial institution acting for the transmitter and the receiving institution must retain records regarding the transmittal order in a form that satisfies established retrievability standards.⁵ The term “[t]ransmittal of funds” is broadly defined to include “[a] series of transactions beginning with the transmitter’s transmittal order, made for the purpose of making payment to the recipient of the order.”⁶ However, the existing BSA rules contain a specific exemption for any “[f]unds transfers governed by the Electronic Fund Transfer Act of 1978 [“EFTA”], as well as any other funds transfers that are made through an automated clearinghouse [“ACH”], an automated teller machine [“ATM”], or a point-of-sale [“POS”] system.”⁷

IMPORTANT TO RETAIN EXEMPTION FOR DEBIT, POS, ACH, AND ATM TRANSACTIONS

Visa believes that FinCEN has appropriately stated in the Notice that, for the purposes of facilitating comment on the survey, the term “cross-border electronic transmittal of funds” contains a broad exemption for “any debit transmittals, [POS] systems, transaction conducted through an [ACH] process, or [ATM].”⁸ Visa believes that the reporting requirements contemplated for cross-border transmittals should not extend to the categories of transactions described in the existing exemption, regardless of whether a transaction is conducted between individuals or business entities.

The Visa Payment System, which operates largely through POS and ATM systems, may conduct as many as 5,000 transactions *per second* in an ordinary business day. In addition, other electronic payments systems conduct huge volumes of transactions through POS and ATM systems on a daily basis. The vast majority of these transactions are related to legitimate transactions for the purchase of goods and services conducted between individuals and merchants that bear no relation to money laundering or terrorist financing activities. Even assuming, for the sake of this analysis, that a threshold amount per transaction is established at \$3,000 or a higher figure, requiring financial institutions to create and retain detailed records of information bearing on transactions governed by the EFTA or otherwise conducted through POS or ATM systems is simply not feasible given the enormous volume of transactions. Moreover, Visa respectfully submits that requiring records of transactions governed by the EFTA or otherwise conducted through POS or ATM systems would be inconsistent with the statutory mandate to establish reporting and recordkeeping requirements that are “reasonably necessary” to detect and take action against money laundering or terrorist financing.

though the substantively identical term “funds transfer” is used in the requirements that apply to banks.

31 C.F.R. § 103.11(q); 31 C.F.R. § 103.33(e).

⁴ 31 C.F.R. § 103.33(f).

⁵ 31 C.F.R. § 103.33(f)(4).

⁶ 31 C.F.R. § 103.11(jj).

⁷ *Id.*

⁸ 71 Fed. Reg. at 14,289.

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If FinCEN determines to move forward to propose reporting requirements for cross-border transmittals, Visa urges FinCEN to avoid creating any unwarranted inconsistency in the nature or scope of the funds transmittals subject to reporting requirements. In this regard, the language of the exemption should be clarified to cover any “funds transfer governed by the EFTA,” consistent with the language of the current recordkeeping requirements.⁹ Thus, regardless of the particular general definition of “cross-border electronic transmittal of funds,” Visa recommends adopting an exemption from that definition, as follows:

Funds transfers governed by the Electronic Fund Transfer Act of 1978 (“EFTA”) (Title XX, Pub. L. 95-630, 92 Stat. 3728, 15 U.S.C. § 1693, *et seq.*) and the rules promulgated under the EFTA, as well as any other funds transfers that are made by check, by debit transmittal, through an automated teller machine, or a point-of-sale system, are excluded from this definition.

Visa encourages FinCEN to continue to work with trade groups representing financial institutions to develop reasonable standards that will facilitate the efforts of law enforcement agencies to thwart money laundering and terrorist financing, without unduly impeding the legitimate operations of financial institutions.

We appreciate the opportunity to comment on this important matter. If you have any questions concerning these comments or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact me, at (415) 932-2178.

Sincerely,

Russell W. Schrader
Senior Vice President and
Assistant General Counsel

⁹ 31 C.F.R. § 103.11(q), (jj).